

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:) DRAG HARNESS
PATRICIA LEWIS et al) Confirmation No. 5508
Serial No. 10/772,560) Group Art Unit 3634
Filed February 5, 2004) Examiner Alvin C. Chin-Shue

APPELLANT'S BRIEF ON APPEAL

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This brief is in support of the Notice of Appeal filed July 26, 2010.

REAL PARTY IN INTEREST

The real parties in interest are Morning Pride Manufacturing, L.L.C. owner by Assignment and Honeywell International, L.L.C. by Stock Purchase Agreement.

RELATED APPEALS AND INTERFERENCES

A Notice of Appeal was filed in the present application on August 28, 2006, together with a Pre-Appeal Brief Request for Review. A Notice of Panel Decision from Pre-Appeal Brief Review was issued October 13, 2006 reopening prosecution.

STATUS OF CLAIMS

Claims 1-2 and 11-16 are pending in the application and are all rejected. Claims 3-10 are canceled. The rejections of claims 1-2 and 11-16 are being appealed.

STATUS OF AMENDMENTS

There have been no amendments filed subsequent to the final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 is directed towards a drag harness (10) used by a rescuer to drag a wearer lying in a supine position from a perilous situation. The drag harness (10) includes first and second arm loops (20, 22) and a drag grip (30), all of which are defined by a single continuous length of strapping fixed directly to itself solely at a common juncture (40). (See page 2, line 22 - page 3, line 16; and Figs. 1-5, all as amended in the Amendment dated August 3, 2009.) Each of the arm loops (20, 22) has a fixed length and is adapted to receive a separate arm of the wearer. (*Id.*) The drag grip (30) is adapted to extend above the shoulders of the wearer and behind the head of the wearer, if the wearer is standing, whereby a rescuer grasping the drag grip can drag the wearer, via the drag harness, if the wearer is lying in a supine position. (*Id.*) The first arm loop (20) is defined by a first strapping length (L1) that is doubled against itself to define first and second lap lengths of the strapping (LL1,LL2). (Page 4, as amended after line 2 in the Amendment dated August 3, 2009 and Figs. 3-5 as amended in the Amendment dated August 3, 2009.) The second arm loop (22) is defined by a second strapping length (L2) that is doubled against itself to define a third lap length (LL3) of the strapping. (*Id.*) The first, second and third lap lengths (LL1,LL2,LL3) of the strapping

residing in stacked relationship at a first location (50) at which all of the first, second and third lap lengths (LL1,LL2,LL3) are fixed together. (*Id.*)

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 2 and 11 stand rejected under 35 USC §103(a) as unpatentable over Hengstenberger et al. (US 4,682,671) in view of Nunn et al. (US 2,758,769) and Schoenbrun (US 2,568,304).

Claims 12-16 stand rejected as unpatentable over Hengstenberger et al. in view of Nunn et al. and Schoenbrun, as applied to claim 1, and further in view of Crouch (US 6,447,037).

ARGUMENT

The Rejection of Claims 1, 2 and 11 as Unpatentable Over Hengstenberger et al. in View of Nunn et al. and Schoenbrun

Claims 1, 2 and 11

The Rejection Improperly Modifies the References Relied on in the Rejection Contrary to at Least Two Express Provisions of the MPEP and the Case Law

(1) The Proposed Modification Renders the Prior Art Unsatisfactory for its Intended Purpose

The rejection is based upon an improper modification of Hengstenberger and Nunn et al. Specifically, Hengstenberger et al. is specifically directed towards providing "a safety harness which is self tightening and securing upon the wearer." (Column 1, lines 67-68). It achieves this by providing the safety harness having "a continuous loop of material connected to itself at a point to define a first large loop and a second smaller loop" (column 2,

lines 13-16), so that "a pulling force on the handle loop 16 cinches or grips the wearer of the jacket 20 by placing opposing forces across the middle of the back and the front of the shoulders, assuring that maximum engagement of the victim is achieved by the harness 10" (column 3, lines 40-44). Nunn et al. has as an express object to provide a harness for a child "that can be quickly applied and removed from the child, and which will not slide or fall from the child." (column 1, lines 32-33) and achieves this by utilizing its plate (13) to create a bite (19) such that the "bite 18 is pulled through bite 19; tightening the harness sufficiently to assure that it will not fall off" (column 2, lines 3-5) because "the friction between bites 18 and 19 is sufficient to retain the parts in an adjusted position and still permit the parts to be easily adjusted for removal or to assure the child's comfort." (Column 2, lines 25-28). However, the intended purpose for both Hengstenberger et al. and Nunn et al. would be completely defeated by the proposed modification which requires that the arm loops of Hengstenberger et al. as modified by Nunn et al. "be fixed at the stacked location, as taught by Schoenbrun, to enable fixed sized loops." This clearly would not allow the cinching and gripping discussed in Hengstenberger et al. and would certainly not allow the adjustment discussed in Nunn et al. Such modifications are strictly forbidden under the case law and the standards set forth in the MPEP (see MPEP 2143.01, V which states that "the proposed modification cannot render the prior art unsatisfactory for its intended purpose" and that "if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification; see also MPEP 2143 *et seq.* and cases discussed therein.") Furthermore, there can be no rational underpinning to support the legal conclusion of obviousness where the proposed modification renders the prior art unsatisfactory for its intended purpose. As announced by the Supreme Court in

KSR International Co. v. Teleflex, Inc., (82 USPQ2d at 1396) there must be some articulated reason with some rational underpinning to support the legal conclusion of obviousness. It is simply not rational to modify a reference so that it would be rendered unsatisfactory for its intended purpose. Accordingly, for these reasons alone, the rejection is improper and should be withdrawn.

(2) The Proposed Modification is Improper Because it Changes the Principle of Operation of Both Hengstenberger et al. and Nunn et al.

As previously discussed, the principle of operation for Hengstenberger et al. is that "a pulling force on the handle loops (16) cinches or grips the wearer of the jacket by placing opposing forces across the middle of the back and the front of the shoulders", and the principle operation for Nunn et al. is that "the bite 18 is pulled through the bite 19; tightening the harness sufficiently to assure that it will not fall off" and that "the friction between bites 18 and 19 is sufficient to retain the parts in adjusted position and still permit the parts to be easily adjusted for removal or to assure the child's comfort." The proposed modification fundamentally changes both these principles of operation by fixing the arm loops to each other at the stacked location so as to provide "fixed sized loops." Again, such a modification is expressly prohibited under the standards set forth in the case law and MPEP. (See MPEP §2143.01, VI stating that "the purpose modification cannot change the principle of operation of a reference" and that "if the purposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious; see also MPEP 2143 *et seq.* and cases discussed therein.") Furthermore, there can be no rational underpinning to support the legal conclusion of obviousness where the proposed modification

changes the principle of the operation of the prior art. As annunciated by the Supreme Court in *KSR International Co. v. Teleflex, Inc.*, there must be some articulated reason with some rational underpinning to support the legal conclusion of obviousness. It is simply not rational to modify a reference to change its principle of operation. Accordingly, for these additional reasons alone, the rejection is improper and should be withdrawn.

(3) The Examiner's Answers in the Final Rejection Do Nothing to Address Applicants' Arguments or to Overcome the Express Prohibition Against the Proposed Modification

The Final Rejection responds to the above arguments by first inaccurately summarizing Applicants' argument as "the modification of Hengstenberger et al would be improper as Hengstenberger states that his harness is self-tightening and by pulling the handle 16, the loop 14 would grip the wearer of the jacket ensuring maximum engagement of the victim to pull the victim". In contrast to this summarization, Applicants quoted Hengstenberger accurately and cited the express language of Hengstenberger as follows:

Specifically, Hengstenberger et al. is specifically directed towards providing "a safety harness which is self tightening and securing upon the wearer." (Column 1, lines 67-68). It achieves this by providing the safety harness having "a continuous loop of material connected to itself at a point to define a first large loop and a second smaller loop" (column 2, lines 13-16), so that "**a pulling force on the handle loop 16 cinches or grips the wearer of the jacket 20 by placing opposing forces across the middle of the back and the front of the shoulders**, assuring that maximum engagement of the victim is achieved by the harness 10" (column 3, lines 40-44). (emphasis added)

It is noted that the Final Rejection's inaccurate summary conspicuously leaves out the express language bolded above, and particularly the express language that is underlined above. Perhaps this is because the proposed modification clearly prevents the principle of

operation and intended purpose shown by that express language. However, the express language quoted from Hengstenberger et al cannot simply be ignored in making a rejection.

Similarly, the Final Rejection's assertions that the prior art references are "analogous arts" do absolutely nothing to overcome the express and absolute prohibitions in the MPEP against the type of modifications proposed in the rejections. MPEP §2143.01 VI states that "THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE" and further that "if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the reference are not sufficient to render the claims *prima facie* obviousness." Furthermore, MPEP §2143.01 V states that "THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE" and if proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. The language of these sections of the MPEP is clear and unambiguous and are an express prohibition against the type of modification proposed in the rejection, and the Final Rejection's assertions about "analogous art" are irrelevant to these express prohibitions.

The Rejection of Claims 12-16 is Unpatentable Over Hengstenberger et al. in View of Nunn et al. and Schoenbrun, as Applied to Claim 1, and Further in View of Crouch

Claims 12-16

The rejection of claims 12-16 as unpatentable over Hengstenberger et al. in view of Nunn et al. and Schoenbrun, as applied to claim 1, and further in view of Crouch is improper

for the reasons set forth above in connection with the rejection of claims 1, 2 and 11. Accordingly, for those reasons alone or together, the rejection of claims 12-16 are improper and should be withdrawn.

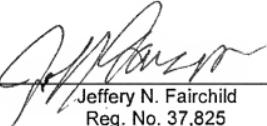
CONCLUSION

In view of the foregoing, it is respectfully submitted that the rejections of each of claims 1-2 and 11-16 should be withdrawn and the claims allowed.

Respectfully submitted,

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CLAIMS APPENDIX

1. A drag harness of a type used by a rescuer to drag a wearer lying in a supine position from a perilous situation, the drag harness comprising first and second arm loops and a drag grip, all of which are defined by a single continuous length of strapping fixed directly to itself solely at a common juncture, each of the arm loops having a fixed length and being adapted to receive a separate arm of a wearer, the drag grip being adapted to extend above the shoulders of the wearer and behind the head of the wearer, if the wearer is standing, whereby a rescuer grasping the drag grip can drag the wearer, via the drag harness, if the wearer is lying in a supine position, the first arm loop defined by a first strapping length that is doubled against itself to define first and second lapped lengths of the strapping, a second arm loop defined by a second strapping length that is doubled against itself to define a third lapped length of the strapping, the first, second, and third lapped lengths of the strapping residing in stacked relationship at a first location at which all of the first, second, and third lapped lengths are fixed together.

2. The drag harness of claim 1, wherein the drag grip is a drag loop, which has a fixed length.

11. The drag harness of claim 1 or claim 2, wherein the drag grip, the common juncture, or both provide provides means for supporting the head of the wearer, when the wearer is being dragged, via the drag harness.

12. The drag harness of claim 1 wherein the continuous length of strapping has spaced first and second ends, the drag loop is defined by a third strapping length that is doubled against itself to define fourth and fifth lapped lengths of the strapping that reside in stacked relationship with each outer and another lapped length of the strapping at the first end, and the stacked fourth and fifth lapped lengths and the another length of the strapping are fixed together at a second location that is spaced from the first location.

13. The drag harness of claim 12 wherein the spaced ends of the continuous length of strapping are fixed together at the second location.

14. The drag harness of claim 12 wherein the first and second locations are adjacent to each other.

15. The drag harness of claim 12 wherein there are three and only three stacked lapped lengths of the continuous length of strapping at the second location.

16. The drag harness of claim 12 wherein there are three and only three stacked lapped lengths of the continuous length of strapping at the first location.

EVIDENCE APPENDIX

There is no evidence that has been entered by the Examiner and relied upon by
Appellant.

RELATED PROCEEDING APPENDIX

There has been no decision by a Court or the Board in any proceeding identified pursuant to (c)(1)(ii) of 37 C.F.R. §41.37.